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EXAMINER

HOEY, ALISSA L

ART UNIT	PAPER NUMBER
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3765

NOTIFICATION DATE	DELIVERY MODE
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11/18/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary	Application No. 10/663,091	Applicant(s) ROCK, MOSHE	
	Examiner Alissa L. Hoey	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-29, 31-37, 39-45, 47-53 and 55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 50 is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-29, 31-37, 39-45, 47-49, 51-53 and 55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/05/08 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-9, 11, 12, 15, 16, 25, 26, 29, 31-36, 37, 39-41, 51-53 and 55 are rejected under 35 U.S.C. 102(b) as being anticipated by King et al. (US 6,018,819).

King et al. teaches the following:

1. (Currently Amended) A multi-layer garment system, comprising: a primary garment including a thermal layer (64, 64a) with at least one raised surface (inherent all fabric constructions have a raised surface); and an outer shell garment (62, 62a, 66, 66a) constructed to be worn over the primary garment (64a, 64), including a first portion comprising an unlaminated and uncoated shell-fabric (62a,) that is breathable, water resistant, and wind resistant (column 5, lines 5-10), and a second portion comprising a laminated or coated shell fabric including a vapor permeable moisture barrier that is substantially waterproof and windproof (66, 62)(column 4, lines 6-32), the first portion

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(back portion) comprising a lower portion of the outer shell garment and the second portion (front portion) comprising an upper portion of the outer shell garment (see figures 4-6), and

the first, lower portion of the outer shell garment being transmissive of water vapor and a predetermined through-flow of air, relative to the second, upper portion, while repelling liquid water, and the second, upper portion of the outer shell garment being substantially non-transmissive of liquid water and through-flow of air, relative to the first, lower portion (see figures 4-6: column 4, lines 7-67 though column 5, lines 1-67).

2. (Currently Amended) The system of claim 1 ~~wherein the outer shell garment is formed entirely of the shell fabric~~ wherein the first portion comprises a separate shell fabric from the second portion, and wherein the shell fabrics of the first and second portions are stitched together to form the outer shell (see different fabric options for the front vs. the back panels).

3. (Currently Amended) The system of claim [[2]]1 wherein the vapor permeable moisture barrier comprises a coating ~~formed on the shell fabric~~.

4. (Previously presented) The system of claim 3 wherein the coating comprises a polymer selected from the group consisting of acrylic, polyurethane, and silicon (DWR is a silicon, polyurethane material: see column 4, lines 14-24).

5. (Currently Amended) The system of claim [[2]]1 wherein the vapor permeable moisture barrier comprises a laminate (62, 66: column 4, lines 63-67 though column 5, lines 1-4).

6. (Previously presented) The system of claim 5 wherein the laminate comprises

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a breathable membrane of PTFE, polyurethane, and polyester (column 4, lines 25-32).

7. (Previously Presented) The system of claim 1 wherein the second portion comprises a second shell fabric different from the shell fabric of the first portion (see materials of front vs. back portions).

8. (Previously presented) The system of claim 1, wherein the first portion comprises a tightly woven shell fabric (figures 4-5).

9. (Previously presented) The system of claim 5 wherein the second portion comprises a tightly woven fabric having air permeability relatively lower than that of the first portion (column 2, lines 9-24).

11. (Previously Presented) The system of claim 1, wherein the outer shell garment has the form of a jacket, and the upper portion of the jacket defines at least a shoulder surface and a top sleeve surface (figures 4-6).

12. (Previously presented) The system of claim 11 wherein the lower portion of the jacket defines at least an underarm area of the jacket (see back portion).

15. (Previously presented) The system of claim 1, wherein the first portion has air permeability in the range of between about one cfm and about ten cfm in a thirty mph wind (column 2, lines 9-24).

16. (Previously presented) The system of claim 1, wherein the second portion provides an air permeability in the range of about one cfm or less in a thirty mph wind (column 2, lines 9-24).

25. (Original) The system of claim 1, wherein the shell comprises a micro-fiber textile material (column 5, lines 5-10 and column 4, lines 6-14).

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26. (Previously presented) The system of claim 1, wherein the thermal layer (64, 64a) comprises a material selected from the group consisting of high loft, sweater-knits and micro-grid fabric (column 5, lines 14-16).

29. (Currently Amended) A lightweight shell garment for use with a primary garment, the shell comprising:

a first portion comprising a tightly-woven, unlaminated and uncoated shell fabric, the shell fabric being breathable, water--resistant, and wind-resistant (62a); and

a second portion comprising [[of]] a laminated or coated shell fabric including a vapor permeable moisture barrier that is waterproof and windproof (62, 66),

the first portion comprising a lower portion of the outer shell garment and the second

portion comprising an upper portion of the outer shell garment (see front vs. back), and

the first, lower portion of the outer shell garment being transmissive of water vapor and

a predetermined through-flow of air (column 5, lines 5-10), relative to the second, upper

portion, while repelling liquid water, and the second, upper portion of the outer shell

garment being substantially non- transmissive of liquid water and through-flow of air,

relative to the first, lower portion (column 2, lines 9-24).

31. (Previously Presented) The lightweight shell of claim 29, wherein the outer shell garment has the form of a jacket (see figures), and the upper portion of the jacket comprises a shoulder surface and a top sleeve surface (figures 4-6).

32. (Previously presented) The lightweight shell of claim 29, wherein the first portion has air permeability in the range of between about one cfm and about ten cfm in a thirty mph-wind (column 2, lines 9-24).

33. (Previously Presented) The lightweight shell of claim 29, wherein the second portion has air permeability of in the range of about one cfm or less in a thirty mph wind (column 2, lines 9-24).

34. (Currently Amended) The lightweight shell of claim 29 ~~wherein the garment is formed entirely of the shell fabric~~ wherein the first portion is made of a separate shell fabric from the second portion, and wherein the shell fabrics of the first and second portions are stitched together to form the outer shell (see front and back panels stitched together).

35. (Currently Amended) The lightweight shell of claim 34 wherein the vapor permeable moisture barrier comprises a coating (DWR: column 4, lines 14-16) ~~formed on the shell fabric.~~

36. (Previously presented) The lightweight shell of claim 35 wherein the coating comprises a polymer selected from the group consisting of acrylic, polyurethane, and silicon (DWR is silicon/polyurethane).

37. (Previously presented) The lightweight shell of claim 29 wherein the second portion comprises a second shell fabric different from the shell fabric of the first portion (see different selection of fabrics).

39. (Previously presented) The lightweight shell of claim 37 wherein the second portion comprises a tightly-woven shell fabric with relatively lower air permeability than that of the first portion (column 2, lines 9-24).

40. (Original) The lightweight shell of claim 29, wherein the shell comprises a micro- fiber textile material (62, 62a).

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41. (Currently Amended) A method of wearing a multi-layered garment, comprising: wearing a primary garment including a thermal layer (64a, 64) with at least one raised surface (inherent due to fabric structure); and wearing an outer shell garment (62, 66, 62a, 66a) constructed to be worn over the primary garment, including a first portion comprising an unlaminated and uncoated fabric that is breathable (62a, 66a), water resistant, and wind resistant, and a second portion comprising a laminated or coated fabric including a vapor permeable moisture barrier that is waterproof and windproof (62, 66), the first portion comprising a lower portion of the outer shell garment and the second portion comprising an upper portion of the outer shell garment (front vs. back), and the first, lower portion of the outer shell garment being transmissive of water vapor and a predetermined through-flow of air, relative to the second, upper portion, while repelling liquid water, and the second, upper portion of the outer shell garment being substantially non- transmissive of liquid water and through-flow of air, relative to the first, lower portion (column 2, lines 9-24).

51. (Previously Presented) The system of claim 1, wherein the second portion comprises front and rear portions of the garment (top vs. bottom of the garment).

52. (Previously Presented) The system of claim 51, wherein the second, upper portion extends over chest and back regions of the garment (top vs. bottom of the garment).

53. (Previously Presented) The system of claim 52, wherein the second, upper portion extends from a collar of the garment, over a shoulder region of the garment, and

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over upper arm regions of the garment (figures 4-6: top vs. bottom portion).

55. (Previously Presented) The system of claim 1, wherein the first, lower portion is not waterproof (column 5, lines 25-44).

4. Claims 44, 45 and 47-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Reuben (US 5,692,245).

Reuben teaches the following:

44. (Previously Presented) A primary garment for use with a lightweight shell, the primary garment comprising:

a front portion comprising an insulating fabric having a raised surface (30), the front portion extending from a shoulder region down over a chest region to a waistline (figure 4A);

a back portion comprising an insulating fabric having a raised surface defining channels within the raised surface (see figure 4A), the back portion extending from the shoulder region down over a back region to the waistline (see figures 4A); and

a pair of sleeve portions (31), each having a raised surface that is capable of being shorter in height than the raised surface of the front portion and extending from the shoulder region down each arm (column 4, lines 28-46).

45. (Previously presented) The primary garment of claim 44 wherein the channels are constructed and arranged to circulate air flowing through the shell fabric (figure 4A).

47. (Previously presented) The primary garment of claim 44, further comprising: a pair of sleeve portions, each having a raised surface less dense than the raised

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surface of the front portion and extending from the shoulder region down each arm (column 4, lines 28-46).

48. (Original) The primary garment of claim 44, wherein the back portion extends over the shoulder region and around a neckline and the front portion extends from the back portion down over a chest region to the waistline (figure 4A).

49. (Previously presented) The primary garment of claim 44, wherein the channels of the raised surface extend vertically and horizontally (see 5C).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 17, 18, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over King et al. in view of Blauer et al. (US 6,490,734).

In regard to claim 1, King et al. teaches a multi-layer garment system (for details see above), comprising: an outer shell garment constructed to be worn over the primary garment, including a first portion comprising an unlaminated and uncoated shell-fabric that is breathable, water resistant, and wind resistant, and a second portion comprising a laminated or coated shell fabric including a vapor permeable moisture barrier that is substantially waterproof and windproof, the first portion comprising a lower portion of the outer shell garment and the second portion comprising an upper portion of the outer shell garment, and the first, lower portion of the outer shell garment being transmissive

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of water vapor and a predetermined through-flow of air, relative to the second, upper portion, while repelling liquid water, and the second, upper portion of the outer shell garment being substantially non-transmissive of liquid water and through-flow of air, relative to the first, lower portion.

However, King et al. fails to teach a primary garment including a removable thermal layer with at least one raised surface.

Blauer et al. teaches a primary garment including a removable thermal layer with at least one raised surface (fleece layer 112, inherently has a raised surface, as all material construction does)

In regard to claim 17, Blauer et al. teaches a jacket garment with a removable thermal layer (122) made of fleece (column 7, lines 18-20)

In regard to claim 18, Blauer and King et al. fail to teach the thermal layer being a double-face velour.

It would have been obvious to have provided the thermal layer being a double-face velour of a fleece material, because as long as the thermal layer provides thermal insulation to the jacket system, the thermal layer can be chosen from either double-face velour or fleece as desired and based upon end use.

In regard to claim 26, Blauer et al. teaches the thermal layer comprising a fleece material which is a high loft material (122).

In regard to claim 27, Blauer et al. fails to teach the specific loft of the material.

It would have been obvious to one having ordinary skill in the art to determine through routine experimentation the ideal loft height of a garment material based upon

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end use and desired results.

It would have been obvious to have provided the garment of King et al. with the removable thermal layer of Blauer et al., since the jacket garment of King et al. provided with a removable thermal layer would allow for a more versatile jacket garment which allows the user to remove/add layers as desired.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 13, 14, 19, 20, 23, 24, 41, 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over King et al. in view of Toombs (US 5,850,634).

In regard to claim 1, King et al. teaches a multi-layer garment system (for details see above), comprising: an outer shell garment constructed to be worn over the primary garment, including a first portion comprising an unlaminated and uncoated shell-fabric that is breathable, water resistant, and wind resistant, and a second portion comprising a laminated or coated shell fabric including a vapor permeable moisture barrier that is substantially waterproof and windproof, the first portion comprising a lower portion of the outer shell garment and the second portion comprising an upper portion of the outer shell garment, and the first, lower portion of the outer shell garment being transmissive of water vapor and a predetermined through-flow of air, relative to the second, upper portion, while repelling liquid water, and the second, upper portion of the outer shell

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garment being substantially non-transmissive of liquid water and through-flow of air, relative to the first, lower portion.

However, King et al. fails to teach a primary garment including a removable thermal layer with at least one raised surface.

Toombs teaches a primary garment being a removable thermal layer with at least one raised surface (see quilted liner 54).

In regard to claims 13 and 42, Toombs teaches a primary garment (54) comprises a storage compartment for receiving the outer shell (60).

In regard to claims 14 and 43, Toombs teaches a jacket wherein the storage compartment comprises a pouch or pocket associated with the primary garment (60).

In regard to claim 19, Toombs teaches the thermal layer (54) comprises a region of channels constructed within a raised or pile surface to provide circulation of air permeating through the first portion of the outer shell garment (see figure 9).

In regard to claim 20, Toombs teaches the thermal layer comprises a front portion having a raised or pile surface extending from a shoulder region down over a chest region to a waistline and a back portion having a raised surface defining channels, the back portion extending from the shoulder region down each arm (see figure 9, identifier 54).

In regard to claim 23, Toombs teaches the back portion extends over the shoulder region and around a neckline and the front portion extends from the back portion down over a chest region to the waistline (see figure 9, identifier 54).

In regard to claim 24, Toombs teaches the channeled region defines channels on

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the raised surface extending vertically and horizontally (figure 9, identifier 54: depending upon how you hold the thermal layer).

It would have been obvious to have provided the jacket system of King et al. with the removable thermal layer and pocket of Toombs, since the jacket system of King et al. provided with a removable thermal layer and a pocket would provide a jacket system that allows the user to add/remove layers as desired and further provides a place to store the liner when not worn.

9. Claims 1 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over King et al. in view of Maeshima (US 4,470,155).

In regard to claim 1, King et al. teaches a multi-layer garment system (for details see above), comprising: an outer shell garment constructed to be worn over the primary garment, including a first portion comprising an unlaminated and uncoated shell-fabric that is breathable, water resistant, and wind resistant, and a second portion comprising a laminated or coated shell fabric including a vapor permeable moisture barrier that is substantially waterproof and windproof, the first portion comprising a lower portion of the outer shell garment and the second portion comprising an upper portion of the outer shell garment, and the first, lower portion of the outer shell garment being transmissive of water vapor and a predetermined through-flow of air, relative to the second, upper portion, while repelling liquid water, and the second, upper portion of the outer shell garment being substantially non- transmissive of liquid water and through-flow of air, relative to the first, lower portion.

However, King et al. fails to teach a primary garment including a removable thermal layer with at least one raised surface.

Maeshima teaches a primary garment being a removable thermal layer with at least one raised surface (see identifier 3: quilt filled liner).

In regard to claim 28, Maeshima teaches the shell is releasably connected to the thermal layer at the waist, wrist and neck (see figures 3 and 4).

It would have been obvious to have provided the jacket system of King et al. with the removable thermal layer, connected at the waist, wrist and neck of Maeshima, because the jacket system of King et al. provided with a removable thermal layer and specific connections to the shell would provide a jacket system that is secure when the lining is fastened in place, but also allows the user to remove the liner when not needed.

10. Claim 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blauer et al. (US 6,490,734) in view of Reuben (US 5,692,245).

In regard to claims 21 and 22, Blauer et al. teaches a multi-layer garment system, comprising: a primary garment including a thermal layer (122) with at least one raised surface (inherent due to fabric construction); and an outer shell garment (30) constructed to be worn over the primary garment (122), including a first portion comprising a shell fabric that is breathable, water resistant, and wind resistant, the outer shell garment defining an upper portion and a lower portion, and a second portion comprising a vapor permeable moisture barrier that is substantially waterproof and windproof (column 6, lines 46-56).

However, Blauer et al. fails to teach the thermal layer having a channeled region.

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Reuben teaches a thermal layer defining a channeled region constructed to provide circulation of air permeating through the first portion of the outer shell garment and comprising: a front portion (30) having a raised surface extending from a shoulder region down over a chest region to a waistline and a back portion having a raised surface defining channels (figure 4A), the back portion extending from the shoulder region down each arm (figure 4A), a pair of sleeve portions (31), each sleeve portion having a raised surface that is capable of being relatively shorter than the raised surface of the front portion and extending from the shoulders region down each arm (column 4, lines 28-46). Further, Blauer et al. teaches a pair of sleeve portions (31), each sleeve portion having a raised surface relatively less dense than the raised surface of the front portion and extending from the shoulders region down each arm (column 4, lines 28-46).

It would have been obvious to have provided the jacket system of Blauer et al. with the thermal lining having channeled construction of Reuben, since the jacket system of Blauer et al. provided with a thermal lining having channels would provide a liner that provides greater warmth and insulation to the user and the channels would help assist in creating a less bulky garment providing greater ease of movement.

Allowable Subject Matter

11. Claim 50 is allowed.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and can be found cited in PTO-892 form submitted herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa L. Hoey/
Primary Examiner, Art Unit 3765